SENATE BILL No. 237

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-2-152.3; IC 35-31.5-2; IC 35-48.

Synopsis: Pseudoephedrine and ephedrine. Provides that materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine are schedule III controlled substances that may be dispensed only by prescription. Repeals: (1) the statute allowing the dispensing of ephedrine and pseudoephedrine without a prescription subject to certain restrictions; and (2) provisions related to that statute. Requires pharmacies and certain retailers that sell ephedrine, pseudoephedrine, or drugs that contain ephedrine or pseudoephedrine before July 1, 2016, to continue to maintain an electronic or written log of such sales through June 30, 2018.

Effective: July 1, 2016.

Glick

January 7, 2016, read first time and referred to Committee on Family & Children Services.

Introduced

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 237

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-30-2-152.3 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 152.3. IC 35-48-4-14.7 (Concerning a pharmacy or NPLEx retailer who discloses information concerning the sale of a product containing ephedrine or pseudoephedrine).~~

SECTION 2. IC 35-31.5-2-61 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 61. "Constant video monitoring", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7(b)(1).~~

SECTION 3. IC 35-31.5-2-66 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 66. "Convenience package", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7(b)(2).~~

SECTION 4. IC 35-31.5-2-120 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 120. "Ephedrine", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7(b)(3).~~

SECTION 5. IC 35-31.5-2-256 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 256. "Pseudoephedrine", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7.~~

SECTION 6. IC 35-31.5-2-279 IS REPEALED [EFFECTIVE JULY

1, 2016]. ~~Sec. 279. "Retailer", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7.~~

SECTION 7. IC 35-31.5-2-320 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 320. "Suspicious order", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7.~~

SECTION 8. IC 35-31.5-2-343 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 343. "Unusual theft", for purposes of IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7.~~

SECTION 9. IC 35-48-2-8, AS AMENDED BY P.L.56-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) The controlled substances listed in this section are included in schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on April 1, 1986, as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or that is the same except that it contains a lesser quantity of controlled substances (1405).

(2) Benzphetamine (1228).

(3) Chlorphentermine (1645).

(4) Clortermine (1647).

(5) Phendimetrazine (1615).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing:

(A) amobarbital (2126);

(B) secobarbital (2316);

(C) pentobarbital (2271); or

(D) any of their salts;

and one (1) or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(A) amobarbital (2126);
(B) secobarbital (2316);
(C) pentobarbital (2271); or
(D) any of their salts;

and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt thereof (2100).

(4) Chlorhexadol (2510).

(5) Embutramide (2020).

(6) Lysergic acid (7300).

(7) Lysergic acid amide (7310).

(8) Methyprylon (2575).

(9) Sulfondiethylmethane (2600).

(10) Sulfonethylmethane (2605).

(11) Sulfonmethane (2610).

(12) A combination product containing Tiletamine and Zolazepam or any salt thereof (Telazol) (7295).

(13) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. (2012).

(d) Nalorphine (a narcotic drug) (9400).

(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in the following limited quantities:

(1) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium (9803).

(2) Not more than 1.8 grams of codeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9804).

(3) Not more than 1.8 grams of dihydrocodeine, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9807).

(4) Not more than 300 milligrams of ethylmorphine, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized

therapeutic amounts (9808).

(5) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts (9809).

(6) Not more than 50 milligrams of morphine, per 100 milliliters or per 100 grams with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts (9810).

(7) Buprenorphine (9064).

(f) Anabolic steroid (as defined in 21 U.S.C. 802(41)(A) and 21 U.S.C. 802(41)(B)).

(g) The board shall except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) through (e) from the application of any part of this article if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(h) Any material, compound, mixture, or preparation which contains any quantity of Ketamine (7285).

(i) Hallucinogenic substances:

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product (7369).

(j) A material, compound, mixture, or preparation that contains any quantity of any of the following substances, pure or adulterated:

(1) Ephedrine.

(2) Pseudoephedrine.

SECTION 10. IC 35-48-4-7, AS AMENDED BY P.L.158-2013, SECTION 633, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses a controlled substance (pure or adulterated) classified in schedule I, II, III, or IV, except marijuana, hashish, salvia, or a synthetic cannabinoid, commits possession of a controlled substance, a Class A misdemeanor, except as provided in subsection (b).

(b) **Except as provided in section 14.5(b) of this chapter,** the offense is a Level 6 felony if the person commits the offense and an

enhancing circumstance applies.

(c) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally obtains:

(1) more than four (4) ounces of schedule V controlled substances containing codeine in any given forty-eight (48) hour period unless pursuant to a prescription;

(2) a schedule V controlled substance pursuant to written or verbal misrepresentation; or

(3) possession of a schedule V controlled substance other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana state board of pharmacy;

commits a Class A misdemeanor.

SECTION 11. IC 35-48-4-14.7 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 14.7. (a) This section does not apply to the following:~~

~~(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.~~

~~(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (g).~~

~~(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (g).~~

~~(b) The following definitions apply throughout this section:~~

~~(1) "Constant video monitoring" means the surveillance by an automated camera that:~~

~~(A) records at least one (1) photograph or digital image every ten (10) seconds;~~

~~(B) retains a photograph or digital image for at least seventy-two (72) hours;~~

~~(C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and~~

~~(D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.~~

~~(2) "Convenience package" means a package that contains a drug having as an active ingredient not more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both.~~

~~(3) "Ephedrine" means pure or adulterated ephedrine.~~

~~(4) "Pharmacy or NPLEx retailer" means:~~

~~(A) a pharmacy, as defined in IC 25-26-13-2;~~

~~(B) a retailer containing a pharmacy, as defined in IC 25-26-13-2; or~~

~~(C) a retailer that electronically submits the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI).~~

~~(5) "Pseudoephedrine" means pure or adulterated pseudoephedrine.~~

~~(6) "Retailer" means a grocery store, general merchandise store, or other similar establishment. The term does not include a pharmacy or NPLEx retailer.~~

~~(7) "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:~~

~~(A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;~~

~~(B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or~~

~~(C) is for cash or a money order in a total amount of at least two hundred dollars ($200).~~

~~(8) "Unusual theft" means the theft or unexplained disappearance from a particular pharmacy or NPLEx retailer of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.~~

~~(c) A drug containing ephedrine or pseudoephedrine may be sold only by a pharmacy or NPLEx retailer. Except as provided in subsection (f), a retailer may not sell a drug containing ephedrine or pseudoephedrine.~~

~~(d) A pharmacy or NPLEx retailer may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the pharmacy or NPLEx retailer complies with the following conditions:~~

~~(1) The pharmacy or NPLEx retailer does not sell the drug to a person less than eighteen (18) years of age.~~

(2) The pharmacy or NPLEx retailer does not sell drugs containing more than:

(A) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, to one (1) individual on one (1) day;

(B) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a thirty (30) day period; or

(C) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a three hundred sixty-five (365) day period.

(3) The pharmacy or NPLEx retailer requires:

(A) the purchaser to produce a valid government issued photo identification card showing the date of birth of the person;

(B) the purchaser to sign a written or electronic log attesting to the validity of the information; and

(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A pharmacy or NPLEx retailer may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A pharmacy or NPLEx retailer that in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(4) The pharmacy or NPLEx retailer maintains a record of information for each sale of a nonprescription product containing pseudoephedrine or ephedrine. Required information includes:

(A) the name and address of each purchaser;

(B) the type of identification presented;

(C) the governmental entity that issued the identification;

(D) the identification number; and

(E) the ephedrine or pseudoephedrine product purchased, including the number of grams the product contains and the date and time of the transaction.

(5) Beginning January 1, 2012, a pharmacy or NPLEx retailer

~~shall, except as provided in subdivision (6), before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), if the NPLEx system is available to pharmacies or NPLEx retailers in the state without a charge for accessing the system. The pharmacy or NPLEx retailer may not complete the sale if the system generates a stop sale alert.~~

~~(6) If a pharmacy or NPLEx retailer selling an over-the-counter product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or NPLEx retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until the pharmacy or NPLEx retailer is able to comply with the electronic sales tracking requirement.~~

~~(7) The pharmacy or NPLEx retailer stores the drug behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee.~~

~~(c) A person may not purchase drugs containing more than:~~

~~(1) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day;~~

~~(2) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period; or~~

~~(3) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, in a three hundred sixty-five (365) day period.~~

~~These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.~~

~~(f) This subsection only applies to convenience packages. A retailer may sell convenience packages under this section without complying with the conditions listed in subsection (d):~~

~~(1) after June 30, 2013; and~~

~~(2) before January 1, 2014.~~

~~A retailer may not sell drugs containing more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction. A retailer who sells convenience packages must secure the convenience packages behind the counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable~~

~~to a customer without the assistance of an employee. A retailer may not sell a drug containing ephedrine or pseudoephedrine after December 31, 2013.~~

~~(g) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.~~

~~(h) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the pharmacy or NPLEx retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular pharmacy or NPLEx retailer, the pharmacy or NPLEx retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular pharmacy or NPLEx retailer behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.~~

~~(i) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.~~

~~(j) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.~~

~~(k) A pharmacy or NPLEx retailer that uses the electronic sales tracking system in accordance with this section is immune from civil liability for any act or omission committed in carrying out the duties required by this section, unless the act or omission was due to negligence, recklessness, or deliberate or wanton misconduct. A pharmacy or NPLEx retailer is immune from liability to a third party unless the pharmacy or NPLEx retailer has violated a provision of this section and the third party brings an action based on the pharmacy's or NPLEx retailer's violation of this section.~~

~~(l) The following requirements apply to the NPLEx:~~

~~(1) Information contained in the NPLEx may be shared only with law enforcement officials.~~

~~(2) A law enforcement official may access Indiana transaction information maintained in the NPLEx for investigative purposes.~~

~~(3) NADDI may not modify sales transaction data that is shared with law enforcement officials.~~

~~(4) At least one (1) time per week, NADDI shall forward Indiana data contained in the NPLEx, including data concerning a transaction that could not be completed due to the issuance of a stop sale alert, to the state police department.~~

SECTION 12. IC 35-48-4-14.8 IS ADDED TO THE INDIANA

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 14.8. (a) This section applies to a pharmacy or NPLEx retailer that, as of June 30, 2016, kept a written or electronic log required by section 14.7 of this chapter before its repeal effective July 1, 2016.**

(b) Notwithstanding the repeal of section 14.7 of this chapter effective July 1, 2016, a pharmacy or NPLEx retailer described in subsection (a) shall:

(1) continue to maintain, through June 30, 2018, its electronic or written log as the log existed on June 30, 2016; and

(2) provide access to the log to any law enforcement officer or the criminal justice institute.

(c) This section expires July 1, 2018.